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R. NARAYANASAWMI AIYAR, B.A., B.L.

VOLUME XXII.

1912.

PUBLISHED BY

MR. S. SRINIVASA AIYAR, B.A., B.L.

Manager, Mylapore, Madras, S.

MADRAS: G. C. LOGANADHAM BROS.
THE "GUARDIAN PRESS," MOUNT ROAD

1912

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In Burma polygamy is undoubtedly lawful, and it is not unlawful to marry the sister of a living wife, though such a marriage is not considered quite respectable, while marriage with a deceased wife's sister is looked upon as proper and even laudable.

The law relating to marriage in Burma is extremely lax. No ceremony of any kind is essential. Mutual consent is all that is required.

In the absence of direct proof, consent may be inferred from conduct of the parties or established by reputation, but when proof of marriage depends wholly or mainly on reputation, the circumstances of the case must be scrutinized with some caution.

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C. P. C., S. 11, Expl. IV—"Might and ought"—*Mortgage suits—Rights of subsqeuent mortgagee unimpleaded in suit.*

When a subsequent mortgagee who had discharged a mortgage prior in date to the suit mortgage fails to put forth his claims in the suit S. 13, Expl. 2 is a bar to a subsequent suit by him to enforce his rights.

Where a third mortgagee who had also acquired a priority by reason of his discharge of a first mortgage on the property was not impleaded in the suit on the second mortgage where in a decree for sale was obtained, *held* that the non-impleaded mortgagee's rights were not barred by *res-judicata* as against the second mortgage,

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2. That if he had been impleaded in the prior suit the 2nd mortgagee would have been allowed to redeem the third mortgagee to the extent of the lien he had by reason of the discharge of the first mortgage and the 3rd mortgagee would in his turn have been allowed to redeem the second mortgagee.

3. Where the enforcement of the priority acquired by the third mortgagee in respect of the first mortgage became barred by limitation before his suit, the subsisting right of his was only to redeem the second mortgagee.

Ibrahim Hossein Khan v. *Ambika Pershad Singh* 468

————**S. 47, O. xx, r. 11—Old Code, S. 257-A**—*Agreement between decreeholder and judgment-debtor—Enforceability in execution.*

An agreement between a money decree-holder and the judgment-debtor by which the former is benefited can be enforced in execution.

The *ratio decidendi* of the decisions in *Venkatagiri Aiyar* v. *Sadagopachariar*, 14 M. L. J. 359 and *Palaniyappa Chettiar* v. *Savari Nayadu*, 18 M. L. J. 548 to the contrary has lost its force by reason of S. 47 and O. xx, r. II, of the new Code. *Sheo Golam Lall* v. *Beni Prasad*, I. L. R. 5 C. 27, *Durga Prasad Banerjee* v. *Lalit Mohun Singh Roy*, I. L. R. 25 C. 86 and *Thakoor Dyal Singh* v. *Sarju Pershad Missers*, I. L. R. 20 C. 22 followed.

Subbaraya Aiyar v. *Ramaswami Pillai* 166

————**S. 48, Cl. 2—"Fraud"**—*Evasion of arrest, a fraud—Discretion of Court—Quantum and nature of proof by creditor—Fraud of one of several judgment-debtors—Effect on execution against others—"The judgment-debtor," meaning of.*

Per *curiam*:—A deliberate evasion of the process of the court with intention to defeat execution of the decree would amount to fraud within the meaning of S. 48, C. P. C.

Per *Sundara Aiyar*, *J.* :—The return of a process server is admissible, under S. 35 of the Evidence Act, as evidence of the facts reported by the process server : and even if the statement of the process server be legally inadmissible, it is open to a court to infer from the circumstances of the case that the absence of a judgment-debtor was due to a deliberate attempt to evade arrest.

The decree-holder is not bound to show continuous diligence during all the time prior to the application : nor need he shew that but for the fraud or force complained of he would have realized the fruits of his decree ; and all that he has to prove is that the judgment-debtor, by fraud or force, at some time prevented the execution, *i. e.*, made the decree-holder's attempts to execute at the time to which the fraud relates, unsuccessful, and it is not necessary for the decree-holder to show that the judgment-debtor guilty or fraud had means to pay the decretal amount or that the decree-holder could not, at any other time before his last application, have realized his decree.

Semble :—The words "nothing in this section shall be deemed to preclude a court from ordering the execution of the decree" in S. 48, C.

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P. C., are not really intended to give the court power either to grant or refuse execution as it might think fit.

Per *Sundara Aiyar, J.* (*Phillips, J. contra*) :—The fraud of one judgment debtor cannot have the effect of extending the time for execution as against his co-judgment debtors.

Per *Phillips, J.* :—The fraud of one judgment-debtor enlarges the time for execution not only against himself, but also against his co-judgment-debtors.

Abdul Khadir v. *Shaiva Ravuthar* 35

———**S. 60, Cl. (n)**—*Right to future maintenance—Crops in land allotted for maintenance.*

Cl. (*n*) of S. 60, C. P. C., interdicts attachment of a mere right to future maintenance and not of a debtor's property or any interest in property though such property or interest might have been granted to him as for maintenance; and consequently; the crops standing on land allotted to a widow for maintenance do not fall within the interdiction in Cl. (*n*) of S. 60.

Govinda Pillai v. *Meenatchi Achi* 204

———**S. 99**—*Applicability to appeals heard after the new Code but filed before the Code came into force—Misjoinder—Practice—Procedure—Second appeal—Court, function of.*

S. 99 of the new Code is applicable to all appeals heard after the new Code came into force though instituted before the Act.

When the appellate court, overruling a plea of misjoinder, passes a decree on the merits of a case, the second appellate court should not reverse the decision on the ground of misjoinder.

Where an order on a claim petition has become final as against one of several claimants, a court is not competent to pass a decree setting aside the order against the said party in a suit by the other claimants.

Tej Mall v. *Papayamma* 225

———**S. 102**—*Test as to nature of suit.*

It is the nature of a suit as originally framed that determines the question whether a second appeal is maintainable and not the form of the suit at a subsequent stage; and so where a suit was brought for the sale of the hypotheca and a personal decree but the prayer for the sale was subsequently withdrawn *held*; that a second appeal lay.

Kothe Raman v. *Minger Pocker* 47

———**S. 114, O. XXI, r. 89**—*Review—Jurisdiction of civil court to review an order dismissing an application under O. XXI, r. 89, for default.*

A civil court has got the power to review an order dismissing for default an application under O. XXI, r. 89

Swaminatha Naicker v. *Paul* 148

———**S. 115, O. 6, r. 17**—*Erroneous exercise of discretion*

The mere fact that the lower court erroneously refused to allow amendment of a plaint is no ground for interference.

Venkatasubbiah v. *Seshachellum* 136

———O. 2, r. 2 (O. C.) S. 43—*Stipulation in partition deed—Pro-note—Partition suit and suit on pro-note.*

Some Hindu brothers entered into a partition. One of them made a claim for an allotment for the approximate marriage expenses of his unmarried daughters. The other brothers in settlement thereof agreed to pay in the partition *karar* a certain sum and two of the brothers executed pro-notes subsequently for distinct sums amounting in the aggregate to the agreed amount.

Held:—That a suit on one of the pronotes was not barred by a previous suit for partition under S. 43, C. P. C. (XIV of 1882).

Quaere:—There is nothing to warrant the assumption that a claim by one of several co-parceners for a separate allotment for the marriage expenses of his daughters out of the family funds was not warranted by the Hindu law.

Where a pro-note is executed in respect of an existing obligation, two causes of action are given rise to, one on the obligation and the other on the pro-note, on either of which a suit may be maintained. The presumption would ordinarily be that the cause of action for the debt is merged in the pro-note. But there would be no effective legal merger when the pro-note cannot be sued on.

Anantanarayana Iyer v. *Savithri Ammal* 231

———O. VI, r. 17—*Amendment of plaint—Addition of prayer for further relief.*

Where the plaintiff asks for an amendment of the plaint by the addition of a further relief without seeking to add anything to the allegations in the plaint, the court should allow the amendment ; and the mere fact that the further relief asked for might have become barred does not necessarily render the amendment improper.

Sevugan Chetty v. *Krishna Aiyangar* 139

———O. XI, r. 21 ; O. XVI, r. 20—*Striking off defence for non-appearance as witness.*

The court has no power, either inherent or otherwise, to strike out the defence of a defendant for failure to appear in time in pursuance of an undertaking given by him to the court for further examination as a witness for the opposite side.

The High Court may not interfere in revision with an interlocutory order under S. 115, C. P. C., but may do so under S. 15 of the Charter Act.

Vasudevan Nambudri v. *Sankaran Nambudri* 60

———O. 20, r. 1—"**Open Court.**"

The expression "Open Court" refers to the place and manner of the pronouncement of judgment.

Venkatesa Aiyangar v. *Kamalammal* 212

———O. XXI, r. 2—"**Adjustment**"—*Applicability of rule—Objection that assignee of decree is not real assignee—Adjustment before assignment not certified—Maintainability of objection.*

Objection was taken by the judgment-debtor to execution of a decree by its assignee on two grounds—(1) that the assignee was not the real transferee but was only a benamidar for the judgment-debter on the understanding between the judgment-debtor and the assignee that the former will execute a mortgage to the latter for the amount; (2) that the decree had been satisfied before the assignment by the assignee agreeing to advance a certain sum and to that extent the decree could not be executed in any event, even though the adjustment was not certified.

Held : Per *Abdur Rahim*, *J*:—That the arrangement between the assignee and the judgment-debtor was as adjustment within the meaning of O. xxi, r. 2, and that the bar created by the rule applied to the arrangement pleaded, even though the same took place prior to the assignment. [*Dictum* in *Rama Ayyan* v. *Srinivasa Pattar*, I. L. R. 19 M. 230, dissented from.]

Per *Sundara Aiyar*, *J*.:—That the assignment consequent on the arrangement suggested need not necessarily amount to an adjustment within the meaning of the rule; that it was always a question of the intention of the parties which could be decided only on evidence, and that clause 3 of O.xxi, r 2, didnot prevent the judgment-debtor from proving that the assignment was not intended really for the benefit of the assignee merely because the fact showing that it was not for his benefit would also show that the assignor's decree was adjusted by means of the agreement between the judgment-debtor and the assignee.

S. 258 of the old Code or O. xxi, r. 2, has no application to an adjustment made with a third party, and the fact that the third party afterwards became the assignor of the decree cannot alter the position. [*Rama Ayyan* v. *Srinivasa Pattar*, I. L. R. 19 M. 230, followed.]

An assignment which operates as a satisfaction of the decree may be relied on to prove that the assignee obtained no valid title under his assignment. [*Sutton* v. *Sutton*, 26 S. C. 33 and *Manmohan Karmookar* v. *Dwarka Nath Karmokar*, 12 C. L. J. 312, referred to.]

Per *Sundara Aiyar*, *J*. (*dubitante*):—Where the adjustment and the transfer deed were before the time within which a compulsory record of the adjustment expired and also before the new Code came into force, the old Code would apply even though the execution application was put in after the coming into force of the new Code.

Per *Abdur Rahim*, *J*.:—*Obiter*:—The Code in force at the time of the application for execution would govern the matter.

Ponnuswamy Nadar v. *Letchmanan Chettiar* 170

————**O. xxi, r. 5 (o-c) S. 545, Cl. (c)**.—"*For the due performance of such decree or order*"—*Deposit for stay of execution pending appeal on claim petition*—*Subsequent order for stay of sale of part*—*Application for refund.*

Proviso (*c*) of S. 545, C. P. C. (1882), cannot be said to contemplate a decree or order in a separate proceeding to be instituted in future.

In execution of a decree for maintenance, attachment was made of certain property. Appellant—a purchaser of the property pending the suit—objected to the attachment but his objections were disallowed. On

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appeal from the disallowing order he deposited the maintenance amount and obtained stay of execution. The appeal was dismissed. When the property was about to be sold, the appellant again objected and it was decided that a moiety of the property could be sold in execution of the decree for cost, but not in execution of the decree for maintenance. The appellant under the circumstances applied for a refund of the deposit.

Held :—(1) That it would be open for the appellant to withdraw the money by satisfying the decree for cost.

(2) That the decree-holder could not ask for the money to be kept in deposit on the plea of his intention to sue for a decree for sale of the attached property under the provisions of the Transfer of Property Act and that the money must remain in court till he obtains that decree.

Saminatha Pathan v. *Soranatha Ammal* 190

———— **O. xxi, rr. 46, 54**—*Immoveable property—Mortgage debt.*

A mortgage debt is not immoveable property within the meaning of r. 54, O. XXI, C. P. C., but falls under Cl. (*a*) of r. 46, O. XXI.

Nataraja Iyer v. *Subbiah Iyer* 105

———— **O. xxi, r. 53**—*Mortgage decree—Attachment and purchase of in execution of decree—Decree-holder-purchaser's rights.*

A decree-holder who attaches and purchases the mortgage-decree of the judgment-debtor is the latter's representative and is entitled to execute the attached decree in any manner lawful for the holder thereof, irrespective of what is conveyed to him by the sale certificate.

Kuppusami Iyer v. *Subbaraya Rowtha* 162

———— **O. xxi, r. 53 (6)**—*Scope—Attachment before judgment.*

O. XXI, r. 53, C.P.C. applies to cases of attachment before judgment.

Venkaippa v. *Lakshmaniah* 394

———— **O. xxii, r. I**—*Abatement of suit—Hindu Law—Reversioner's suit to set aside alienation by widow.*

A revisioner's suit for a declaration that an alienation by a widow is invalid abates on the plaintiff's death and it cannot be continued by the next reversioners.

Chinna Veerayya v. Lakshminarasimma. 375

———— **O. xxxiii, r. 10 (S. 411)**—"*First charge on the property*"—*Costs in suits in forma pauperis.*—

A mortgagee obtained a decree for sale on his mortgage on a certain date ; but before the sale, the wife of the mortgagor brought a suit *in forma pauperis* against the mortgagor for dower on the allegation that the same was charged on the mortgaged property. The suit was decreed with costs against the mortgagor but dismissed with costs against the mortgagees and the amount of the court-fees was ordered to be a first charge on the amount decreed to the wife and the defendant, her husband, was also made responsible for it. The Government sold the mortgaged property in execution of the order in respect of the court-fee amount due to them.

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Held: that the decree in the pauper suit did not create or purport to create any charge on the mortgaged property in favour of the Government.

Ragho Prasad v. *Mewa Lal* 457

———O. 34, r. 1. (T. P. A., S. 85.) *Proviso—"Notice"—Presumption as to notice of existence of puisne mortgage—Mortgage suit—Effect of non-impleading—Non-impleaded parties' rights—Mortgage—Subrogation—Intention—Presumption.*

Whether a mortgage paid off is extinguished or kept alive depends upon the intention of the parties *Mohesh Lal* v. *Mohunt Bavan Das* I. L. R. ref. to. The ordinary rule is that a man having a right to act in either of two ways shall be assumed to have acted according to his interests *Gokulda's case* I. L. R. 10 C. 1035. ref. to. The observations of the Privy Council in *Gokuldas' case* relating to the state of the art of conveyancing in India and the practice in the case of extinguishment of prior mortgages by purchasers of equity of redemption with notice of a second or subsequent mortgage are true at the present day. *D. S. Chaudri* v. *Jogmaya*, I L. R. 29 C. 154, ref. to The doctrine of *Toulmein* v. *Stee re*, 3 Mer. 210. (1816 is not applicable to Indian transactions).

The ordinary presumption is that a mortgagee takes the ordinary precaution before parting with his money of inspecting the register of the district about the prior incumbrances on the property; the same presumption will apply to the case of a mortgagee bringing a suit on his mortgage and a mortgagee should ordinarily be presumed to be aware of the incumbrancers on the property for purposes of S. 85, T. P. A. and where any mortgagee of the property is not impleaded in a mortgage suit, the non-impleaded mortgagee's rights will not be barred by S. 13, C. P. C. (XIV of 1882).

Ibrahim Hussein Khan v. *Ambika Pershad Singh.* 468

———O XLI, rr. 17, 19 (O. C., Ss. 558, 556)—*Restoration of appeal dismissed for default—Gross negligence of pleader—Client's remedies—Court's discretion—Suit for immoveable property—Right acquired by respondent in appeal dismissed for default, nature of—Words—"Attend"—"Appear."*

Under the Code of 1908 a court has power to restore an appeal dismissed for default even where the appellant is not able to prove that he was prevented by sufficient cause from appearing when the appeal was called on for hearing. If the respondent has been so affected in the meanwhile that he cannot be restored to his former position, that may be a ground for refusing restoration. That discretion vested in the court would enable it to deal with any proper objections that the respondent may urge against restoration.

A pleader is not altogether a private agent engaged by a party, and the doctrines of agency should not be applied without reservation to a pleader. When the court has any control over the pleadings and when the act of the pleader is not one done entirely out of court it is not proper to bind the client absolutely by the pleader's act. It may be that a client would not be entitled to relief against his opponent merely because his pleader in the actual conduct of the case was guilty of negligence in adducing evidence or in arguing the case or otherwise, in consequence of

which the judgment went against the client. But the same thing will not hold good in the case of the failure of the pleader to appear at all for his client.

The court is not bound to restore an appeal in every case where non-appearance is imputable to the pleader's negligence but may in its discretion leave him to his remedy against the pleader by an action for damages. But where the negligence in the case of the pleader was so gross as to amount to fraud, the evidence showing design on the part of either the vakil or his clerks to do nothing for the client and to appropriate his money, and the suit was one relating to immoveable property instituted by the appellant on behalf of himself and other persons under leave of court :—*Held* that it was a proper case for restoration of the appeal.

The relations between a pleader and his client dwelt on.

The theory of the acquisition of a right by the respondent by the very dismissal of an appeal for default commented on.

Per *Spencer, J.* :—The difference between the meaning of the words " appear " and " attend " in Ss. 558 and 556 of the Code of 1882, O. IX, r. 1, of the Code of 1908 and O. XLI, rr. 17 and 9, dwelt on.

Muruga Chetty v. *Rajasami.* 284

————**O. 41, R. 27,** Cl. (b)—" *Any other substantial cause,*" *meaning of —record of reasons.*

Per *Abdur Rahim, J.*—The expression " any other substantial cause" in O. 41, R. 27, Cl. (*b*), is not to be understood in a wide and unrestricted sense but should be understood as referring to the same class of cases as the one specifically named. It would not cover a case where the evidence on record suggests to the appellate court a certain plea which one of the parties might have relied on, but did not, and it proceeded to take additional evidence in support of that view.

Per *Phillips, J.*—The appellate court would be justified in thinking that absence of a document which would confirm or rebut the oral evidence is such an inherent lacuna in the evidence as would justify its admission in appeal in order to decide a very material question which has not been decided in the lower court.

Where the reasons for the admission of further evidence are apparent in the judgment : *Held* that the requirements of the law under O. 41, R. 27, Cl. (2), had been sufficiently complied with.

Oral evidence of the dealings between the parties in a case had been given in the first court. The plea was not raised before the first court that the account was a mutual, open and current account; but when it was first raised before the first appellate court the District Judge thought that the evidence already on record shewed that the defendants' claim was a running account and admitted the account books as additional evidence in support of the plea.

Held per *Abdur Rahim, J.* (*Phillips, J. contra*) that the appellate courts action was not justified by Order 41, R. 27, C. P. C.

Subba Naidu v. *Ethirajammal,* 14

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———(1882), **S. 162**—*No duty of court to bind down witnesses to appear.*

S. 162, C. P. C. (1882), does not impose any duty on the trial court to bind down the witnesses to attend at the adjourned date of hearing.

O. XLIII, r. 1, Cl. (*a*) C. P. C., does not give an appeal against an order of remand not passed under O. XLI, r. 23, C. P. C. (1908).

Vijayaraghava Reddi v. *Komarappa Reddi* 409

Contract—Suit against third party, *beneficiary, for breach of condition in contract—Right of suit.*

A person who takes a benefit under a contract between two others, bound by the conditions under which he takes the benefit, even though he is a stranger to it ; and is consequently liable to be sued in respect of the condition.

Kulondavalu Padayachi v. *Kamatchi Aiyar* 456

———**Suit on, by stranger** *not party to the contract—Hindu Law—Family settlement.*

Where, at a partition between the members of a joint Hindu family, provision is made for female members of the family, the female members are entitled to the benefit of the provision and to sue upon it. [*Shuppu Ammal* v. *Subramaniam* I. L. R. 33 M. 238, *Arumuga Goundan* v. *Chinnammal* 10 M. L. T. 214 **followed**

Rajagopala Raju v. *Radhayya* 159

Contract Act, S. 25—*Agreement controlling the procedure of court in deciding a suit—Agreement to have a question decided according to the decision of another court in another case.*

An agreement by the parties to a suit that they would abide by the decree of another court in another case as regards the question raised in the first case will not deprive the plaintiff of his right to have the first suit decided on the merits.

The ordinary rule is that, when the court is 'seized' of a case, it has jurisdiction to decide it in the manner prescribed by law, and parties have no right to interfere with its authority to do so. There are, no doubt, well understood exceptions to the rule, but where the exceptions do not apply the rule must prevail. The dispute may be settled by any lawful agreement, the court may refer the question to an arbitrator, or the parties may enter into an agreement making the oath of one of them conclusive of all or any of the facts in issue. But the parties cannot agree to control the court in its decision of the suit in a manner different from that prescribed by law.

Rajah of Venkatagiri v. *Chinta Reddi* 447

———**S. 69**—*Reversioner's payment of mortgage money to save property from sale -subrogation* :—*See* mortgage 364

———**Ss. 73, 63, 55**—*Scope of—Damages—Measure of—Difference of price—Date of computation.*

S. 65 of the Contract Act does not entitle a promisee for his own purposes and without the consent of the promissor to extend the time for performance which had been agreed to by the parties to the contract. S. 55 of the Contract Act does not enable the promisee to say that he

NOT TO BE REMOVED
DEPARTMENT OF

Contract Act—(*Contd.*)

elected to keep alive the contract in the hope of being able to claim heavier damages for the breach of the contract.

Per *Ayling, J.*:—S. 63 deals only with concessions on the part of the promisee advantageous to the promissor. S. 55, read with S. 2 (*i*) to relating revocation of the contract only means that the promissor loses the power to enforce the contract, *i. e.*, to claim any advantage due to himself thereunder. The promisee may enforce it or not as it suits him. In case he enforces it he can sue for damages naturally resulting from the breach which cannot include any aggravation of damages caused by the promisee's action or inaction subsequent to the breach.

Defendant contracted to deliver to plaintiff some candies of cotton at a certain rate within 60 days. He failed to so deliver. Plaintiff wrote a letter some months afterwards demanding delivery of cotton within a week, and again a month later he wrote a letter rescinding the contract and claiming, as damages, the difference between the contract price and the market price on the date of the last letter.

Held :—That the damages should be assessed with reference to the market rate on the date of expiry of the 60 days agreed upon as the time for delivery in the contract.

Muthayamanigaran v. *Lakku Reddiar* 413

———**S. 74**—*Exorbitant compound interest a penalty*—300 p. c. Exorbitant interest at 300 p. c. compound interest in default of payment on due date is a stipulation by way of penalty.

Ganapathi Pillai v. *Sundara Thevan* 354

Costs—*Abatement—Deceased defendant's representatives' claim to costs*:—*See* Abatement 439

———*Contribution—Charge.*

In a suit for contribution as to costs incurred to establish title in prosecuting a common litigation of plaintiffs and defendants as sole members of a Samuham owning property and entitled to emoluments attached to it, the costs payable by the defendants will be no charge on the defendants' share of the property belonging to the Samuham, especially where the title to the property was not directly the question in the suit and the agreement between the parties was not that the liability for costs of any ' property should form a charge on the property.

Arunachalam Pattar v. *Seshan Pattar* 406

Courts Procedure—*Agreement to have a question decided according to the decision of another court in another case*: *See* Contract Act, S. 25. 447

Co-Tenancy—*Custom—Two families living together without 'illatom' or other family arrangement—Rights of—Equal rights claimed by custom—Validity of custom—Admissions—Effect of, when made in ignorance of legal rights.*

There is no custom in the District of Nellore that, when two families live together and there are intermarriages amongst the members thereof, the two families have equal rights in the properties which they hold and enjoy.

Such a custom may be legal if it originated in an arrangement of the parties concerned or is otherwise dependent on family arrangements.

Date..............

Co-Tenancy—(*Contd.*) PAGE.

A custom to be effective must be a territorial custom; and isolated cases are of little value unless it be proved that the two families living together have been united together on equal terms.

An admission of the defendant in favour of the plaintiff in ignorance of her legal rights will not bind her if, as a matter of fact, the plaintiff had no legal claims.

Subbama v. *Audilakshmamma.* 260

Cr. P. C., S. 107, Cl. (4).

A Magistrate is not bound as a matter of law to allow bail to a person brought before him for proceedings under S. 107, Cr. P. C.

In re *Narayanasami Naicker.* 357

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———**Ss. 144, 7**—*Duty of Divisional Officers—Assistance in exercise of lawful rights.*

It is the duty of the Divisional Officer, who is responsible for the peace of his Division, to use his authority for the protection of persons who seek to exercise a right which the law allows them and to restrain persons who threaten to obstruct the exercise of such right, and for this purpose to enforce, if necessary, the provisions of S. 107, Cr. P. C., not against the former but against the latter.

In re *Gurusawmy Nadar* 251

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———**S. 145**—*Possession—Possession of receiver held to be possession of party.*

Held that the possession of the Receiver from the date of his appointment in the case was possession on behalf of the party who should ultimately be found by the Magistrate to have been in possession prior to the date of the Receiver's appointment for purposes of S. 145, Cr. P. C.

Ismail Ghami v. *Katinna Rowther.* 154

———**S. 162**—*Oral evidence—Police witness.*

Per *Special Bench.* Oral evidence of what a person stated to a Police witness is not precluded by S. 162, Cr. P. C.

Per *Chief Justice* and *Ayling, J.* (Concurred in by *Wallis, Miller, Abdur Rahim, and Sundara Aiyar, JJ. Benson, J.* dissenting.) For purposes of S. 162, Cr. P.C. using as evidence means only putting in the written record as documentary evidence in the case; but the statement of the officer himself as to what was stated to him is admissible.

Per *Sankaran Nair, J.* The words "such writing shall not be used in evidence" may fairly be construed to mean not only that such writing cannot be proved but also that secondary evidence of such writing cannot be given.

When a witness gives his evidence from actual recollection of the fact which came to his memory on reading his diary he cannot be said to be using the document in evidence.

In order that a statement by an accomplice may be evidence against others, it is necessary that there must be an admission of guilt of the person making the statement or facts must be stated from which there may be an inference of his guilt.

A Police witness cannot refer to his diary in the witness box.

Emperor v. *Nilakanta* 491

Cr. P. C.—(*Contd.*) PAGE.

——**S. 195, cl (c)**—*Penal Code, ss.* 463 and 468.

An offence under S. 463, I. P. C., mentioned in Cl. (*c*) of S. 195, Cr. P. C., covers an offence under S. 468, I. P. C., the object of mentioning S. 463 in S 195 (*c*) Cr. P. C., being to include all cases of forgery whatever the nature of the fraudulent intention may be. *Queen-Empress* v. *Tulja*, I. L. R. 12 Bom. 36 referred to.

Sessions Judge of North Arcot v. *Ramani Ammal* ... 141

——**S. 195, Cls. 1, 6, 7, Sanction**—*Legal evidence, necessity of—Jurisdiction of High Court—Petition from order refusing to revoke sanction—Nature of jurisdiction of High Court—Difference of opinion between Judges—Letters Patent, Cl.* 36—*Cr. P. C., Ss.* 429, 439.

By the Full Bench :—The power conferred upon the High Court by S. 195, Cl. 6, Cr. P. C. is not a part of the appellate and revisional jurisdiction of the High Court conferred by Ch. 31 and 32, Cr. P. C. It is a special power conferred by S. 195, Cl. (6) : and when the Judges of the Division Bench hearing a case under Cl. 6 of S. 195, Cr. P. C., are equally divided the case is governed by S. 36 of the Letters Patent and not by S. 429 or S. 439, Cr. P. C.

An order refusing to revoke a sanction is one " granting a sanction" and it is open to a party dissatisfied with the order to apply to a superior Court under Cl. 6 of S. 195, Cr. P. C.

Per *Sundara Aiyar, J.* (*Spencer, J.* dissenting) :—A sanction in cases falling under Cl. (*b*) and (*c*) of S. 195 Cr. P. C. not based on legal evidence is illegal ; and the same holds good where the investigation under S. 202, Cr. P. C. is made by a Police officer or by the Magistrate himself.

Obiter :—A sanction given under Cl. (*a*) of Sub-S. 1 of S. 195, Cr. P. C., and under S. 196 and 197, Cr. P. C., need not in all cases be based on legal evidence.

A Magistrate received a complaint of criminal breach of trust, examined the complainant under S. 200, Cr. P. C., and suspecting the complaint to be the outcome of jealousy referred it under S. 202, Cr. P. C., for investigation by the Police. On receiving the Police report, he dismissed the complaint under S. 203 Cr. P. C., and granted a sanction for prosecution of the complainant.

Held by *Sundara Aiyar, J.* (*Spencer, J.* dissenting) that the grant of sanction was illegal, not being based on legal evidence.

Audimulam v. *Krishnayen.* 419

——**Ss. 200 (a), 203, 537**—*Omission by Presidency Magistrate to examine complainant before dismissing case under S.* 203 — *Irregularity.*

An omission by a Presidency Magistrate to examine the complainant before dismissing a complaint under S. 203, Cr. P. C., is at the most an irregularity within the meaning of S. 537, Cr. P. C., even assuming that a Magistrate should do so.

In re *Velu Nallan* 156

Cr. P. C.—(*Contd.*) PAGE.

——————**Ss. 213, 531, 195**—" *The Court of Session*"—*Order of commitment—Sanction for offence under S.* 468—"*Using a document*"—*Penal Code, Ss.* 468, 471.

The expression "the Court of Session" in S. 213, Cr. P. C.. can only mean the Court of Session having jurisdiction to try the case under S. 177, Cr.P. C. and every commitment should only be to the court empowered to try the case under S. 177 Cr. P. C.; and if a commitment is made to a wrong court, the whole trial is illegal and a transfer to the right court of session from the court having no jurisdiction would not render the proceeding legal. [*Ledgard v. Bull* I. L. R. 9A 191 followed.]

Obiter :—The expression "using a document" is apparently used in the sense of its being put forward in some way for one of the purposes mentioned in S. 463, I.P.C.

An involuntary production of a document in court in obedience to a summons to produce it is no user of it within the meaning of S. 471, I.P.C.

An order of commitment is an order within the meaning of S. 531, Cr. P. C.

Sessions Judge of North Arcot v. *Ramaniammal.* 141

—— **S. 234.**—*Penal Code—Criminal breach of trust of an aggregate sum—Single charge—Legality of conviction.*

Where a person receives money for the express purpose of using it for his master's benefit in a particular way, he is entrusted with money, and his appropriation of it to himself amounts to criminal breach of trust, and consequently, a conviction for criminal breach of trust committed by misappropriation of a large sum of money made up of various items (more than three in number) on false pretences is not illegal.

In re *Ramappa.* 112

——————**S. 250**—" *Information to Police* "—*Information to Village Magistrate of theft.*

Information given to a Village Magistrate cannot be regarded as information given to the Police even though the Village Magistrate is bound to report it to the Police. Consequently a complainant who complains to the Village Magistrate of theft cannot be ordered to give compensation under S. 250, Cr. P. C. [*King-Emperor* v. *Thammana Reddi* I. L. R. 25 M. 667 followed].

In re *Arulanadham.* 138

——————**Ss. 304, 305**—"*Accident or mistake*"—*Jury, questioning of.*

A Judge has no power to question a Jury as to the reasons of their verdict where the same is unanimous and unambiguous.

Where a Judge questioned a Jury as to their reasons for their verdict which was unanimous and unambiguous and in consequence two of the Jury were led to say they were misled as to some evidence by the notes of the foreman and that they would like to reconsider the case : *Held* that the case was not a case of " accident or mistake" within the meaning of S. 304, Cr. P. C.

In re *Rama Naicker.* 365

——————**Ss. 423, 428**—*Additional evidence—When to be called for—Retrial, when ordered.*

Cr. P. C.—(*Contd.*) PAGE.

Per *Sundara Aiyar, J*:—The language of S. 428, Cr. P. C., seems to indicate cases where, there being already evidence on the record, the court considers it to be unsatisfactory or where the evidence on record leaves the court in such a state of doubt that it considers necessary, to enable it to decide the case, to have further evidence. It does not appear to be applicable where the prosecution had ample opportunities to produce evidence and had failed to do so.

Per *Phillips, J. (Benson, J.* concurring) :—S. 428, Cr. P. C., merely says that evidence may be taken when "necessary" and in each case the necessity must be determined on the particular facts of the case. Where the court itself was mistaken as to the sufficiency of the evidence on record and framed a charge in the opinion that a *prima facie* case of publication was made out, it is a proper case to direct additional evidence being taken.

It is not enough that the prosecution by its own negligence failed to produce evidence which it was its duty to do.

In order to justify an order for a retrial it is necessary that the court should come to the conclusion that the trial was not held properly for some reason or other.

Per *Sundara Aiyar, J*:—The power to direct a retrial is not confined to cases where the trial was held by a court having no jurisdiction. A retrial may be ordered where the trial is held to be illegal on the ground of misjoinder of charges ; where evidence is improperly rejected by the lower court, or where, though the accused was rightly acquitted of one offence, the appellate court comes to the conclusion that he ought to have been tried for another offence and in every case of irregularity in the trial such as where persons who ought not to have been tried together have been so tried.

Jeremiah v. Vas 73

———**Ss. 429, 439.**—*Letters Patent, cl.* 36.

When the Judges of the Division Bench hearing a case under cl. 6, of. S. 195, Cr. P. C. are equally divided the case is governed by S. 36 of the Letters Patent and not by S. 429, Cr. P. C. 419

———**S. 496.**—Bail—Discretion to refuse bail to person procceded with under S. 107 Cr. P. C., S. 496 Cr. P. C. must be taken subject to the special provisions of Cl. (4) of S. 107.

In re *Narayanasami Naiker* 357

———**S. 526.**—"*Equal jurisdiction*"—*Transfer from the file of Chief Presidency Magistrate to that of a Presidency Magistrate—High Court's powers of transfer.*

The Court of a Presidency Magistrate in Madras is a Court of "equal jurisdiction" with that of the Chief Presidency Magistrate within the meaning of S. 526, Cr. P. C., and, consequently, the High Court has power to transfer a case from the file of the Chief Presidency Magistrate to that of any other Presidency Magistrate.

In re *Venkateswara Sastri* 114

Crown Prerogative—*Meaning and limits of—costs in Pauper suit.* PAGE.

It is only when claims of the Crown and claims of "common persons" concur or come into competition that the Crown is preferred. The Crown has no more right than a "common person" to seize A's property (a mortgagee's property) and apply it in, or towards the discharge of a debt due from *B* (the mortgagor in respect of the court-fee due to Government in a different suit.)

Ragho Prasad v. *Mewa Lal* 457

Custom—*Sheik Ansaris—Gift of father's estate to daughters—Estate taken in.*

Neither evidence as to the limited rights by custom of a widow in her deceased-husband's property nor evidence that a Mahomedan father had been prevented by some local custom from giving the bulk of the property to one of his sons is evidence of the custom alleged in the case that, among the Sheikh Ansaris of the Punjab Mahomedans, a female takes only a life interest in the ancestral property which has come to her by gift from her sonless father and had on the property no power of alienation beyond her lifetime.

Held : Also that the alleged custom was disproved in the case.

Umarkhan v. *Naiz-ud-din khan* 240

Decree, form of—*Specific performance to sell land-subsequent purchasers impleaded.*

The proper decree to be passed in a suit for specific performance of a contract to sell land, where the land has been sold to some of the defendants subsequent to the agreement to sell, is to direct the subsequent purchaser to execute the conveyance to plaintiff.

Subbiah Pillai v. *Vellappa Naiker.* 124

Deed—*Construction--Kanom—Personal remedy for deficit—Claim for sale abandoned, effect of.*

A document ran as follows :—" I shall pay you the said sum of Rs. 200 before the 30th Makaram 1078 next and receive back this deed. If I fail to pay the amount at the prescribed time I agree to your realising the principal with interest accruing at 18 per cent. a year from the prescribed time so long as it remains unpaid, by causing sale of my jenmam and all other rights on the properties hypothecated and to pay the deficit, if any, in person * * * ."

Held, that the mortgagee was bound to proceed against the hypotheca before claiming a personal decree and that he was not entitled to a personal decree against the mortgagor if he gave up the claim for sale.

Kothe Raman v. *Minger Pocker* 47

Defamation—*Prosecution for—Proof of Essentials.*

In a prosecution for defamation, it is incumbent on the prosecution affirmatively to prove that the accused published the libel complained of. The omission of the accused to deny the publication in any written statement he may have tendered cannot be urged by the prosecution in answer to the complaint of want of necessary proof by the prosecution ; and where the libel complained of is one contained in a newspaper, there can be no conviction without legal proof that the accused was the printer and publisher of the newspaper.

Jeremiah v. *Vas* 72

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Evidence—*Proof—Statement by dying person—Methods of proof.*

Where the verbal statement of a dying person is sought to be proved, the proper and legal mode of proving it is by eliciting from the person who heard the deceased make the statement what the deceased said.

If the statement was taken down in writing by the witness or by some one in the presence of the witness, the witness would be entitled to refresh his memory, if he so wanted, by referring to such writing ; otherwise the writing itself is not relevant unless it is in the nature of a deposition taken in the presence of the accused. Where the deceased dictated his statement and it was taken down and he then signed the writing after being satisfied as to its accuracy, such writing may be regarded as a statement by the deceased in writing and would be admissible under S. 32 of the Evidence Act ; and even then it would not bar a witness who heard the statement from proving it independently of the writing ; and ordinarily, it would be desirable to have on record what the witness is able to reproduce from memory what he heard the deceased state in addition to the writing in which the statement was taken down.

The Public Prosecutor v. *Bala Nagi Reddi.* 458

Evidence Act, S. 25—*Scope of.*

Per Chief Justice and Ayling, J. (concurred in by *Miller, J*).

S. 25 of the Evidence Act does not preclude the admission of a confession made to a Police officer by person not on trial against others on rial as corroboration of his statement made in the trial of others in proof of the truth of his deposition as a witness.

1. Per *Benson, Wallis, Abdur Rahim & Sundara Aiyar, JJ.* affirming *Sankaran Nair, J.*, contra (*Miller, J.*, concurring with *Chief Justice & Ayling, J.*):—S. 25 of the Evidence Act precludes the admission of a confession made to a Police officer by a person both as against the person making it as well as against others for any purpose whatsoever.

King-Emperor v. *Nilakanta.* 491

———**S. 47**—*Handwriting expert evidence—Probative force of.*

There may be cases in which the peculiarities in the handwriting of a person are so numerous and striking and there are so many mannerisms of the forger that he has been unable to avoid in committing his forgery that the court might well come to the safe conclusion on expert evidence alone that a writing is that of a particular person.

Probative force of expert opinion on handwriting evidence dwelt on.

Held, also that in the case before their Lordships that it was unsafe to base a conviction on the expert evidence alone in the case.

Venkata Row v. *The Crown.* 270

———**S. 81**—*Persumption.*

The presumption of the genuineness of a newspaper, under S. 81 of the Evidence Act, does not include a presumption that it was printed and published by the person by whom it purports to be.

Jeremiah v. *Vas.* 73

———**S. 90**—*Practice—Procedure—Appellate court, powers of.*

When *prima facie* evidence of custody and of the date of a document

Evidence Act—(*Contd.*) PAGE.

purporting to be thirty years old is given, the court generally remarks, the document on the footing that there is sufficient evidence to justify its being marked as an Exhibit at that stage. It is only subsequently that the opponent exercises his right of adducing evidence of circumstances which entitle him to say that the presumption under S. 90 of the Evidence Act should not be drawn with respect to the document, and the court generally arrives at its conclusion on the matter after the evidence on both sides has been given.

Where the party was not prejudiced by any ruling on the part of the court or prevented from adducing all the evidence that he could to prove the document or to ask the court to presume its genuineness :

Held : that the appellate court had the same power to decide whether the document should be presumed to be genuine or not as the first court itself.

Ramien v. *Veerappudian.* 217

——**S. 95**—*Admissibility of evidence—Words—" Kalan."*

Evidence is admissible to show that the house intended by a vendor to be sold was a house other than that standing on the site referred to in the deed, having regard to the fact that otherwise the language used becomes meaningless with regard to existing facts.

The meaning of the word " Kalan" dwelt on.

Annathurai Aiyar v. *Ramanuja Chariar* 411

——**S. 114 ill** (b) Per *Chief Justice and Ayling*, JJ. (affirmed by *Benson*, *Wallis*, *Miller* JJ.) *Sankaran Nair* J. dissenting and concurred in by *Abdur Rahim* J. and *Sundara Aiyar* J.

Prior statements of the approver himself will be corroborative evidence contemplated in ill (b) to S. 114 of the Evidence Act.

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——**S. 133**.—Approvers evidence—Corroboration necessity for.

Per *Chief Justice* and *Ayling*, J. affirmed by *Benson*, *Wallis*, *Miller* & *Sundara Aiyar* JJ. (*Sankarn Nair*, J. dissenting and concurred in by *Abdur Rahim* J.

The proper direction in the case of approver or accomplice evidence is this : " Consider the evidence of the approver, always bear in mind that it is tainted evidence, scrutinize it with the utmost care, accept it with the greatest caution, consider it in the light of the circumstances in which it is given and in the light of all the other circumstances in the case of which evidence is legally admissible. Then if you believe it, act on it even if there is no corroboration in the strict sense of the word. If you do not believe it, reject it. The character of the corroborative evidence which may lead the Court to believe that the evidence of the *informer* is true depends entirely on the nature of the charge and the facts of the case. Oral testimony of independent witnesses is not necessary. What are "material particulars" in each case must depend on the facts of the case.

Per *Sankaran Nair J* ;—(*Abdur Rahim J*). A person should not be convicted except under " very special circumstances" upon the uncorroborated testimony of an accomplice.

Evidence Act—(*Contd.*) PAGE.

2. The special circumstances are that the grounds on which an accomplice's evidence has been held to be untrustworthy did not either exist in the case or did not exist in their full strength; that there are countervailing considerations of greater weight which diminish or entirely get rid of the weight due to such presumptions.

3. The confirmation that is required is the confirmation of the accomplice in some fact which goes to fix the guilt on the particular person charged *i.e.*, the corroboration must be of some incident which will raise an inference of guilt of the accused.

Emperor v. *Nilakanta*.. 491

———**S. 157**—*Legally competent to investigate.*

Per *Chief Justice* and *Ayling*, J. :—(affirmed by *Benson*, J. *Wallis*, *Miller*, JJ. An officer of the grade of an Inspector of the C. I. D. department is an officer legally competent to investigate within the meaning of S. 157 of the Evidence Act and the Criminal Procedure Code.

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Expert evidence *in handwriting—Probative force of* 270

Guardianship—*Minor—Considerations for court—Welfare of minor.*

The texts of Hindu Law do not recognize any absolute rights of guardianship in any one, the sovereign being entrusted with the guardianship of all minors and being, therefore, entitled to appoint any person as guardian in their interests. The question for consideration in applications as to guardianship of a minor is *prima facie* the welfare of the minor; and in cases where it is not possible to consult the minor's wishes owing to the minor's tender age, it is the duty of the court to come to his own conclusion as to what would best promote the minor interests.

Held that in the circumstances of the case, where, among other factors for consideration, the father of the minor was residing outside the jurisdiction of the court, the maternal grandfather and the maternal grandmother were preferable guardians to a motherless minor five years old to the minors own father, who had married a second time.

Batcha Chetty v. *Ponnusawmy Chetty* 68

Guardians and Wards Act, S. 7—*Welfare of minor—Religious in which minor is to be brought up—Father's choice of religion.*

In the appointment of guardians for a minor, the paramount consideration with the court is the welfare of the minor.

A Hindu father is entitled to appoint a guardian for his child by will or by word of mouth to the exclusion of the mother. He would not lose the right by becoming a Christian and he is entitled to say in what religion an infant child should be brought up.

Held that, in the circumstances, a case was not made out that the court should interfere with the decision of the father that the child should be brought up in the Christian religion.

Albrecht v. *Bathee Jallamma* 247

———**Ss. 24, 43**—*Orders under—Jurisdiction, nature of—Order directing third person to pay money to guardian for minor—Revision—C. P. C., S. 115.*

Guardians and Wards Act—(*Contd.*) PAGE.

The District Court has no jurisdiction, under the Guardians and Wards Act, over persons other than the guardian of a minor and cannot enforce rights and claims of the ward for or against the ward by proceedings under the Act which does not provide any machinery for the same; and consequently an order directing the step-mother of a minor to pay the minor's marriage expenses to the minor's guardian purporting to be made under the Act but not really warranted by it is without jurisdiction and is liable to be set aside under S. 115, C. P. C.

Komma Somakka v. *Pedda of Ramiah* 193

Handwriting expart evidence,—*probative force of* 270

Hindu law—Adoption—Adopted son's right *to set aside alienations by intervening male owner—Alienation for binding purposes and otherwise—Onus—Representations by borrower—Adoption if can divest estate when estate impartible and already vested in another male ?*

An adopted son cannot set aside an alienation made before his adoption by an intervening male owner of the estate, especially where the alienation is for discharging antecedent debts.

Obiter :—The adopted son cannot get it set aside even if the alienation be not for a purpose binding on the estate.

Per *Chief Justice* :—The rights of an adopted son do not relate back to a period earlier than the date of his adoption.

Semble :—Per *Curiam*—The adoption of a person to one who was not the last male owner of an impartible estate cannot divest the estate from the successor in whom it had vested before adoption.

Per *Chief Justice* :—There is no authority to show that the principle of the decision in *Bhoobun Moyee's case* 10 M. I. A. 279 does not apply in the case of a joint family.

Per *Phillips*, J. :—In the case of an impartible estate, although the successor must be sought for amongst the survivors of the undivided family, the succession is not by survivorship but by inheritance; and consequently, the rule laid down in *Bhoobun Moyee's case* 10 M. I. A. 279 is applicable to the case of an adoption to one other than the last male owner in the case of an impartible estate.

Per *Phillips*, J.:—Representations of the borrower are evidence of the necessity for the loan and may in certain cases be treated as *prima facie* proof as between the lender and the heir of the borrower.

Where a large portion of the loan has been proved to have been borrowed for family necessity, the onus of proving that the balance was not for a binding purpose is on the person who attacks the alienation.

Sivagnanam Servaigar v. *Ramasawmy Chettiar* 85

————*Allotment for marriage* 231

————**Gift of** *property to coparcener's daughter.*

A gift made by a father to his own daughter or by a managing member to the daughter of any of his coparceners, provided it be of a reasonable amount, is valid as against the donor's son.

In an undivided family the manager is in the position of a parent and guardian to the daughters of all the deceased members. It is his duty

Hindu Law.—(*Contd.*) PAGE.

to give them in marriage as much as it is to give his own daughters in marriage ; and no distinction can be drawn between a gift made to the daughter of the donor and one made by him as managing member to the daughter of any of his coparceners.

The gift should be guided by propriety and not by caprice. The propriety of the quantum givable discussed and pointed out.

Held that a gift of Rs. 400, when the family was possessed of Rs. 2,400, to a deceased coparcener's only daughter (the family consisting of the donor and his only minor son the plaintiff) was in the circumstances good ; [*Anivillah Sundararamayya* v. *Cherla Sitamma* 21 M. L. J. 695 discussed and commented on. The correctness of the translation of Sloka 175 of Yajnavalkya in *Anivillah Sundararamayya* v. *Cherla Sitamma* questioned.]

Vettor Ammal v. *Pooch Ammal* 321

———**Joint family—Manager powers of**—*Gift of property to coparcener's daughter* 231

———**Joint family**—*Suit and decree against* de facto *managing member without describing him as such—Effect of.*

If a suit is brought against a *de facto* managing member of a Hindu family to enforce a debt binding on the family property and a decree is passed, that decree will bind the other members of the family who are not parties to the suit if it appears that by the suit relief was sought to be, and was in fact, obtained against the defendant as representing the family and not merely in his individual capacity.

The mere fact that a person was not described as the managing member does not necessarily show that he was not so in fact.

Jijamba Bai Sahib v. *Jathai Row Sahib* 45

———**Marriage expenses**—*Maternal uncle's disposition of an orphan girl—Abandonment of guardian—Suit by paternal grandfather and uncle—Marriage during pollution.*

A Hindu maternal uncle who gives his sister's daughter, an orphan girl without her parents, in marriage when both her paternal grandfather and paternal uncle had abandoned their guardianship is entitled to be reimbursed with the expenses of the marriage ; and the fact that he celebrated the marriage when the paternal family of the girl was under pollution owing to her paternal uncle's wife's confinement, does not disentitle him from recovering the expenses of the marriage, the marriage itself not being invalid on that account however objectionable the celebration of the marriage might have been from a ceremonial point of view.

Narayana Iyer v. *Subramania Iyer* 49

———*Reversioner—Title to redeem mortgage made by last owner—Title to save property from sale. See mortgage-subrogation.* 364

———*Reversioner's suit to set aside alienation—Death of reversioner—abatement. See C. P. C. O. 22, r. 1.* 375

———**Stridhan Inheritance**—*Mother's property taken on partition.*

In the absence of any intention to the contrary expressed by the members effecting a partition, immoveable property taken by a Hindu

Hindu Law.—(*Contd.*) PAGE

widow on the partition of the joint family property under the Mitakshara Law, is not part of her stridhan in the narrow sense of the word, indicating her separate property or *peculium*, descendible to her own heirs on her death; but it stands in the same position in which property inherited by her stands and is descendible to her husband's heirs.

Mangal Prasad Singh v. *Mahadaeo Prasad* 462

———**Widow**—*Alienation without legal necessity—Consent of, or ratification by, the reversioners for the time being—Validity of.*

•In Madras, alienation, by a Hindu widow made with the consent of the next reversioners at the time of the alienation or consented to or ratified after the transaction by the reversioners, for the time being, will be good and valid apart from any question of legal necessity. *Pilu* v. *Balaji*, I. L. R. 34 B. 165 diss. from.

Venkatasubbier v. *Chinnasamier* 488

———**Will**—*Authority to adopt given by the Ist will—Second invalid will—Effect of, on the first—Authority to adopt—Doctrine of dependent revocation.*

Prima-facie a devise which is inoperative as a disposition of property is also inoperative as a revocation of an earlier disposition; but where the infirmity of the second will is apparent on the face of the will and the defect intrinsic, the second will does not operate as a revocation of the earlier devise; and where the will is inoperative for reasons outside the instrument it operates as a revocation of the earlier devise.

A Hindu stated by will that he had selected a person for adoption and further directed that in case the said adopted son happened to die in the life-time of the testator's widow she should make another adoption. Subsequently, he made the adoption of the intended person himself, and on a later date he made a second will directing that on the death of the adopted son the property should devolve in a certain manner. The second will made no mention of the first, and was found invalid on the ground that the testator had no power to dispose of the joint family property.

Held—(1) That the second will did not operate so as to revoke the authority to adopt conferred by the first on the widow.

(2) That the fact that the testator himself adopted did not put an end to the authority to adopt conferred by the first will.

(3) That the earlier will was admissible in evidence in a suit for declaration that a second adoption by the widow is invalid.

Venkatanarayana v. *Subbammal* 395

Illatom—*What constitutes illatom.*

It is not sufficient to constitute a person an *illatom* that he lives in his father-in-law's house, assists his widow after her husband's death and is employed by her to pay the Circar kist.

To constitute a person an *illatom* a specific agreement is necessary.

Quaere.—Whether a female could, after her husband's death, when her husband's daughter was already married, constitute that daughter's husband an illatom son-in-law.

Narayudu v. *Venkamma* 265

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Insolvency Act, Provincial, *III of* 1907—*Petition for insolvency by debtors—Matters to be inquired into before adjudication.*

A court is not bound to consider, before passing the order of adjudication in an insolvency petition by the debtor under Act III of 1907, whether the debts are real and whether the petitioner is unable to pay his debts, though the court has power to refuse to make an order of adjudication on grounds such as the prevention of abuse of court's process etc., the proper state for the enquiry of these matters being before the order of discharge is made.

Jeer Chetti v. *Rangasawmi Chetti* 52

———**S. 52**—" *Reputed Ownership*"—*Insolvent leaving the keys of the business premises with the creditor at night in non-business hours.*

Where the effect of the stipulation between the secured creditor and the insolvent was to make the mortgagee custodian of the key out of business hours, and until the happening of the breach of the stipulation, the creditor had apparently no right to intermeddle with the goods even during those hours : *Held*—(I) That the goods continued to be in the possession, order or disposition of the trader notwithstanding that the keys were taken every night to the secured creditor and taken from him every morning, (2) That, in any view, the goods were absolutely in the possession, order and disposition of the insolvent.

In re *Shamsuddin Sahee.* 441

Internation law (Private)—*Pledge of kuri chit in foreign territory—Suit and execution sale of chit—Property situate beyond foreign territory in British India.*

If a foreign law allows a pledge of moveable property or of a debt, there is nothing to prohibit a court of the same territory from selling the property in execution so as to pass a valid title to it, even if the property is situate outside the jurisdiction at the time. [*Ganshamlal* v. *Bhansali* I. L. R. 5 B 249, commented on.]

D'Coutha v. *Assan Kunhu* 149

Judgment on holiday—*Not a nullity—Madras Civil Courts Act, S.* 30—*C. P. C., O. XX, r.* I—" *Open court.*"

A judgment pronounced on a holiday is not on that account a nullity though, if any party is injuriously affected by a court doing judicial work on a day when the court is closed, he will be entitled to redress.

The expression " open court" in O. XX., r. I, C. P. C., refers to the place and manner of the pronouncement of judgment.

The provision with regard to the time of pronouncement is merely that it shall be at once or on some future day of which notice shall be given. Holidays are not excepted provided notice be given. S. 30 of the Madras Courts Act III of 1873 merely gives permission to adjourn, and there is no prohibition of the doing of all work of a judicial character during the time when the court is adjourned.

Venkatesa Aiyangar v. *Kamalammal* 212

Jurisdiction of High Court—*Transfer of case from file of one Presidency Magistrate to another.* 114

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Land Acquisition Act, S. 25, Cl. (1), Ss. 18, 11—" *Less than the amount awarded by the Collector "—Jurisdiction of court to go into whole question of the amount of award on reference with specified objection—Jurisdiction to lessen amount of particular items subject to the proviso in Cl.* (1) S. 25.

On a reference under S. 18 of the Land Acquisition Act it is competent to the Judge to hold that the claimant is entitled to a sum less than what the Collector would give him as regards some of the items included in the award, provided the total amount of compensation awarded by the Collector is not reduced.

The words "less than the amount awarded by the Colleector" in Cl.(1) of S. 25 of the Act is the total amount and not what is given under different heads which make up the aggregate amount awarded.

When a reference is made under S. 18 the whole question as to how the compensation is to be calculated is to be necessarily re-opened and not merely the particular objection.

Gangadara Sastri v. *The Deputy Collector of Madras* 379

Land revenue—*Freedom from liability to be assessed —Onus—Land Acquisition Act, S. 279—Effect of—Vesting of title to acquired land.*

Where land is acquired by the Government for a Municipality under the Land Acquisition Act, the title vests in the Government to the land and the Municipality subsequently derives its title from the Government.

A person claiming to hold lands from the Government without liability to pay assessment must show some grant exempting him from the payment of the ordinary asssessment.

No exemption can be claimed without a grant or exemption in express words.

Hanumanulu Pantulu v. *The Secretary of State for India.* ... 445

Land Tenure—Karamkuri Tenure 118

———**Kasavargam tenure**, *incidents of.*

Held, accepting the findings of the District Judge arrived at on evidence taken in a case from the Tanjore District that the chief incidents of a kasavargam tenancy were :—

(*a*) The manaikat or site is the property of the mirasidar : the kasavargamdar has no proprietary interest in it; but he is ordinarily the proprietor of the superstructure built upon it.

(*b*) The kasavargamdar holds the manaikat free of rent, or for a more or less nominal rent, on condition that he performs services for the mirasidar as an artisan or otherwise as the case may be.

(*c*) The kasavargamdar has no right to transfer the manaikat to another but on his death it passes to his heirs on the same conditions as those on which he held it.

(*d*) The mirasidar is entitled to eject the kasavargamdar is forthwith, if the latter refuses to render him the customary service.

Land Tenure—(*Contd.*) PAGE.

(*e*) If the kasavargamdar is objected, the mirasidar is bound to compensate him for any house which he may have erected on the land during his tenancy and the kasavargamdar is not entitled to claim compensation for the first time in second appeal.

Madarsa Rowthen v. *Amirtham*. 1

———**Tree patta**—*Cancellation—Incidents—Position of tree pattadar and land pattadar.*

The cancellation of a tree patta means that Government will no longer make any demand on the pattadar for revenue in respect of the trees; and in the absence of any contention or proof that the Government resumed possession of the trees or made any grant of them to the land pattadar, the tree pattadar is entitled to be in possession of the trees.

Quaere:—How far the tree pattadar *quoad* the Government is affected by the cancellation of the tree patta and whether the Government can resume ownership of the trees.

Sengoda Goundan v. *Raju Goundan* 201

Letters Patent, Cl. 13—*Transfer of suit from Presidency Small Cause Court—Practice—Procedure—Jurisdiction, original or appellate—Appellate Bench, incompetent*

The High Court is competent to deal with transfer application of a suit from the file of the Presidency Small Cause Court, under its extraordinary original jurisdiction under Cl. 13 of the Letters Patent; and the application cannot be disposed of by a Division Bench sitting on the appellate side.

The jurisdiction of the HighCourt is broadly divided into three classes mutually exclusive of each other: ordinary original, extraordinary original and appellate.

Srinivasa Aiyar v. *Balakrishna Devai* 187

———**Cl. 15**—"*Trial*"—*Meaning of—Whether includes " appeal.*"

The word " trial" in Cl. 15 of the Letters Patent includes appeal; and no appeal under the Letters Patent lies from the judgment of a single judge of the High Court passed in an appeal against an acquittal.

Rajammal v. *King-Emperor* 44

———**Cls. 25 and 26**—*Applicability of to Act XIV of* 1908.

By the *Full Bench* cls. 25 and 26 apply to all criminal trials before the High Court whether in the exercise of its ordinary or extraordinary original criminal jurisdiction under cls. 22 and 24 of the Letters Patent or of any future statutory original criminal jurisdiction that may be conferred upon it by the Legislature.

Per *Benson* and *Sundara Aiyar*, *JJ*. A certificate under Cl. 26 of the Letters Patent has not the effect of opening up the whole case as if on appeal; but it only gives the Court power or authorty to review the case or so much of it as may be necessary in order to determine the point or points of law raised.

Emperor v. *Nilakanta* 491

———**Cls. 36**—Jurisdiction of High Court to hear cases when there is difference of opinion between the Judges under Ss. 428, 429, Cr. P.C. ... 419

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Limitation Act, S. 14—*Plaint ordered to be re-presented in proper Court—Computation of period.*

Proceedings instituted wrongly in a court without jurisdiction cannot be deemed legally valid and capable of being continued in another court; and where the plaint instituted in a wrong court is re-presented in the proper court, the proceedings in the right court are not to be deemed as the continuation of the proceedings in the wrong court for purposes of limitation. [*Mohidin Rowthen* v. *Nallaperumal Pillai*, 21 M. L. J. 1000 followed.]

Seshagiri Row v. *Velayudan Pillai* 377

———**Art. 11**—*Claim suit* 225

———**Arts. 44, 144**—*Suit by minor for declaration and recovery of property alienated by guardian.*

Art. 44 and not Art. 144 is the article applicable to a suit for a declaration that a sale of plaintiff's property by his mother as guardian is not binding on him, and for possession and mesne profits. [*Gnana Sambanda Pandara Sannadhi* v. *Velu Pandaram*, I. L. R. 23 M. 279 and *Madugula Letchiah* v. *Palli Mukkalinga*, I. L. R. 30 M. 593 followed.]

Sivavadivelu v. *Ponnammal* 404

———**Arts. 49, 62 & 120**—"*Specific moveables*"—*Money not specific moveable—Suit by Karnavan for Tarwad money received by Anandravan from a stranger.*

A suit by the Karnavan for recovery of Tarwad money received by the Anandravan from a stranger is a suit for the recovery of money "had and received" within Art. 62 of the Limitation Act.

Money is not "specific moveable property within the meaning of Art. 49 of the Limitation Act."

Art. 120 should be applied only as a last resort in case no other article is applicable; and consequently, a court should see before applying Art. 120 whether no other article would apply.

Sankuni Menon v. *Govinda Menon*, ... 485

———**Arts. 49, 145**—*Suit for return of jewel given to procure loan after discharge of loan.*

Mere silence on the part of a person without replying to a demand for specific moveable property may not amount to a refusal.

Plaintiff handed a jewel to defendant for procuring a loan from another by pledge. Defendant did so. Plaintiff paid off the debt through defendant who got back the jewel and retained it. *Held* that in the absence of an agreement that the jewel should remain in deposit with the defendant after repayment of the loan, Art. 145 would not apply and that Article 49 was applicable.

Gopalsami Iyer v. *Subramania Sastri* 152

———**Art. 85**—*Accounts, mutual, open and current—Essentials of mutuality.*

Per *Abdur Rahim, J.* (*Phillips, J. contra*).—The essential requisite of Article 85 of the Limitation Act is that there should be reciprocal demands. It is not sufficient, to bring a case within the article, that there is an open and current acccount or that the entries shew debit and credit.

Limitation Act.—(*Contd.*) PAGE.

Per *Phillips, J.*—The mere fact that the balance was always in favor of one party is not conclusive proof against the accounts' mutuality for it is sufficient that there is reciprocal dealings. [*Velu Pillai* v. *Ghouse Mahomed*, I. L. R. 17 M. 293 referred to.]

Subba Naidu v. *Ethirajammal.* 14

———**Arts. 118, 119, 141**—*Suit for possession of property.*

Omission to bring a suit for declaration that an alleged adoption of defendant was invalid or never in fact took place is no bar to a suit for possession of property from defendant. [*Thakur Tirbhuvan Bahadur Singh* v. *Raja Rameshar Bakhsh Singh*, I. L. R. 28 A. 727 referred to.]

Umar Khan v. *Naiz-ud-din Khan* 240

———**Art. 120**—*Suit to declare execution sale invalid—Attachment and sale, different causes of action.*

An execution sale affects the title of the owner of the property quite in a different manner than that in which an attachment affects him ; and consequently, an execution sale gives the owner a fresh cause of action to sue for declaration of the invalidity of sale apart from the attachment.

Anantarazu v. *Narayanarazu.* 108

———**Art. 182**—"*Application in accordance with law—Application for execution of attached decree.*

The effect of the attachment of a decree is only to prevent an alienation of it; and an application to execute an attached decree by the decree-holder thereof is an application in accordance with law.

Gapala Menon v. *Anujan Rajah.* 146

———*Application against one of several representatives of deceased judgment-debtor—Effect on other representatives.*

An application for execution against one of the representatives of a sole judgment-debtor saves limitation against other representatives as well.

[*Ramanuj Seivak Singh* v. *Hurgu Lal*, I. L. R. 3 A. 517 and *Krishnajee Janardhan* v. *Murar Row Narasinga Row*, I. L. R. 12 B. 48 followed.]

Ramanuja Ammal v. *Marikurnthu Ammal* 169

Madras Acts—Civil Courts Act, S. 30—Scope of. ... 212

———**Estates Land Act, I of 1908, S. 53**—*Suit after Estate Land Act for rent accrued due before the Act.*

A suit for rent accrued due before the Estates Land Act came into force is maintainable after the coming into operation of the Act without a tender of pattah.

Veerabadra Raju v. *Kumari Naidu* 451

———*Estates Act, Land, S. 77*—"*Arrear*" *includes interest.*

The word "arrear" includes also the interest due on the rent in arrear.

Vedachella Mudaliar v. *Vijayaraghava Chariar.* 219

———**Hereditary Village Offices Act—Act III of 1895, S. 3, Cls. (3) and (4)**—*Interpretation—Jurisdiction of Revenue courts—Village Carpenter's claim.*

Revenue courts have Jurisdiction to try a claim to the office and emoluments of a village carpenter in a proprietary estate.

Madras Act—(*Contd*). PAGE.

Cl. (4) of S. 3 comprises a distinct class of offices as distinguished from Cl. (3) of S. 3 and the offices mentioned in Cl. (4) do not really form an exception to the applicability of the Act itself.

The object of the draftsman in grouping the offices in S. 3 into 4 groups is merely to classify them under convenient heads for the purpose of dealing with them in different sections with reference to the questions of succession, punishment, etc., of village officers, artizans and servants. S. 5 is intended to re-enact the rule of inalienability embodied in Reg. VI of 1831 which was repealed by Act III of 1895; and there can be no conceivable reason why the legislature would not have intended not to declare the inalienability of emoluments attached to the offices in Cl. (4) of S. 3 [*Chinnayya Asari* v. *Annajappa Mudali*, 7 M.L.J. 264 not followed.]

Mutyala Papayya v. *Kosuri Muramullu.* 156

——**VIII of 1865, S. 7—Patta, tender necessary**—*Madras Estates Land Act, S. 53—Suit after Estates Land Act for rent accrued due before the Act.*

Under Act VIII of 1865 (Madras) the tender of a patta is only a statutory pre-requisite to enable the landlord to take legal proceedings against his tenant and not a condition necessary to complete his right to the rent: and as that statutory pre-requisite necessary to enable the landlord even to sue for rent has been taken away by the Estates Land Act, a suit for rent accrued due before the latter Act came into force is maintainable after the coming into operation of the Act without a tender of patta.

Veerabadhra Raju v. *Kumari Naidu.* 451

——**Malabar Tenants Improvements Act, S. 19**—*Kanom—construction of covenant.*

Contracts prior to January 1886 limiting the right to make improvements, are not affected by S. 19 of the Malabar Tenants Improvements Act. It may be that S. 19 did not intend to pronounce any agreements between the Jenmi and his Kanomdar as to what should be regarded as improvements suitable to the holding invalid.

A Kanom deed had in it the following clause: "If I make Chamayams thereon exceeding Rs. 25 in value I shall only remove and take them at the time of surrender and shall not demand the value of improvements therefor." *Held* that the object was not to restrain the Kanomdar from building but to restrict his right to compensation if he built and that the Kanomdar was entitled to the rate prescribed by the Act. [*Koshikot Pudia Kovilagath Sree Manavikraman* alias *Cheriyah Rajah Avergal* v. *Chundayil Madathil Ananta Pattar*, I.L.R. 34 M. 61 followed.]

Paric Amma v. *Moothoran.* 221

——**Rent Recovery Act, VIII of 1865, Ss. 49, 76**—*Suit for damages for unlawful ejectment under S. 10.*

A suit for damages for illegal eviction before the expiry of 30 days in pursuance of an order under S. 10 of Act VIII of 1865 is maintainable.

The use of the word "judgment" in S. 76 of the Act with reference to "proceedings taken by a public officer or a court" shows no more than that there are "proceedings" under the Act in which a Collector may pass a "judgment" and not there are no proceedings in which he would not pass an order not amounting to a judgment.

Achanna v. *Venkataramanya.* 127

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Maintenance—Separate maintenance 309

Malabar Law—Karamkuri tenure, *incidents of—Non-transferability —Words—'Karamkuri.'*

Non-transferability is one of the incidents of *Karamkuri* tenure; and the absence of an express provision for re-entry in case of alienation is immaterial for the purpose of determining the tenure on alienation.

The word "Karamkuri" itself means only permanent right of cultivation

Achutha Menon v. *Sankaran Nair*, ... 118

————**Karnavan's suit** *against Anandravan for refund of Tarwad money received:—See Limitation Act, art.* 49.... 485

————**Karnavanship** *and Uraimaship.*

Uraimaship is, unless expressly reserved, an incident of Karnavanship; and where a Karnavan ceases to be a Karnavan he simultaneously ceases to be the Uralan of the Davaswom of which he, as Karnavan, was also trustee; and the Uraimaship goes to his successor in title.

Narayanan v. *Sankaran* 126

————**Marumakkathayam law**—*Gift to a woman and her children—Estate taken —Karnavan's powers over the property so given —Status of donees —Building by one on parcel of land —Demolition—Compensation—Bona fide.*

According to the Marumakkathayam law, property is held by the members of a Tarwad jointly without any right to compulsory partition and without any individual right of disposal so long as the Tarwad continues to exist. Property gifted to a woman and her chidren is, when the donees are governed by the Marumakkathayam law, taken with the above mentioned incidents [*Soorjeemoney Dossee* v. *Deenobundoo Mullik*, 6 M. I. A 526 and *Shurusool* v. *Shawukram*, 2 I. 7 referred to] and the issue of the donees become entitled on birth to the property equally with the donees. [*Katankandikoma* v. *Sivasankaran*, 20 M. L. J. 134 referred to] and none of the persons taking under the gift has any right of disposal of his or her interest contrary to the Marumakkathayam law. [*Pattatheruvath Pathumma* v. *Mannamkunnyil Abdul*, I. L. R. 31 M. 218 referred to.] The members do not become a Tarwad so as to give the Karnavan all the ordinary rights of a Karnavan over the members of his branch. The Manager's right is confined to the management of the special property owned by him and the other members of his branch [*Koroth Amman Kotti* v. *P. Appu Nambiar*, I. L. R. 29 M. 322 explained] but the donees do form a Tarwad in so far that the members who are born in the branch acquire a right in the property by birth.

A Karnavan ordinarily cannot create a Kanom for such a long period as sixty years in the absence, especially, of a special benefit such as would justify the same; nor can it be upheld even for the usual period of 12 years.

The members of a Marumakkathaym Tarwad are not tenants in common in the sense in which the term is used either in the English law or in the Dayabhagha School of law. No junior member can take possession of any particular portion of the family estate he might choose and erect buildings on it and continue in occupation of it; and if a junior member does take possession of any portion, and builds on it he cannot resist recovery or demolition of the building on general principles.

Malabar Law—(*Contd.*) PAGE.

It is not open to a person who builds on land belonging to another to raise the plea of *bona fide* building, if he had been put upon enquiry as to his real title, and if he put a wrong construction on a deed of gift on which the plea of *bona fide* is sought and maintained, he must take the consequence.

Kalliani Amma v. *Govinda Menon* 23

———**Marumakkathayam and Aliyasantana family**—*Maintenance—Separate maintenance—Living away from family house—Good grounds—Waiver—Past maintenance.*

In order that a member of a Marumakkathayam or Aliyasanthana Tarwad may be entitled to separate maintenance, he or she should be able o allege some good ground for doing so. To go out of the Tarwad house for living with the husband is a good ground for claiming separate maintenance. If a member lives away from the Tarwad house for an improper purpose that would be a good ground for refusing separate maintenance. What purposes are proper and what improper should be left for the decision of courts. Where there is substantial inconvenience in living in the family house either on account of want of room there or because there are quarrels which make it uncomfortable to a member to live there or where there are several houses belonging to the Tarwad and a member lives in one of them and where the Karnavan's conduct has afforded a valid excuse for a member living away from the Tarwad house, separate maintenance may be awarded. In determining the rate of maintenance more should not be allowed than would be received by the claimant if he resided in the family house along with its other members and the grant of a share of the income proportionate to the number of members is unsustainable.

In a suit for past maintenance waiver during any portion of the period for which maintenance is claimed may no doubt be inferred. It may be sufficient to show that the conduct of the party was such as to lead to a reasonable inference of waiver.

Marvadi v. *Pamakkar* 309

———**Moplahs**—*Gift to woman's husband—Death or divorce of woman—Effect of—Marumakkathayam and Mahomedan Law.*

A gift to the husband of a girl by the tarwad becomes void on the death or divorce of the girl where the parties who are Moplahs are governed by the *Marumukkathayam law*; but where the parties are governed by the *Mahomedan law*, this rule does not apply, especially when no usage to that effect is alleged.

Packrichi v. *Kumbacha* 122

Mesne profits—*Ascertainment—Decree for rents—Pro-notes for rent—Costs of infructuous proceedings.*

Plaintiff obtained a decree for possession of property with mesne profits. The property was in the hands of a Receiver on behalf of the defendants: *Held* on the question of the ascertainment of mesne profits: (1) that the plaintiff was entitled to what the Receiver actually received or with due diligence might have received; and, where the Receiver had sued tenants and obtained decrees for rents—the plaintiff was entitled to those decrees only and not to the amounts covered by them,

Meane profits—(*Contd.*) PAGE.

(2) That in respect of rents due for certain faslis but unrealised owing to certain mistaken but *bona fide* proceedings the failure to realize the rents was itself no answer, and that, in the absence any proof that the Receiver could not have realized them even though he had taken appropriate proceedings, plaintiff was entitled to the amount.

(3) That the plaintiff was not liable to accept pro-notes executed by the tenants in favor of the Receiver but was entitled to the amount of rent for which he took the pro-notes.

(4) That the plaintiff could not be saddled with the cost of inrfuctuous distraint proceedings taken by the Receiver.

Venkayamma Row v. *Narayanaswami Naidu* 253

Minor—Guardianship—*Consideration for court—welfare of minor* ... 68

Mortgages prior, and puisne—*Decree and sale by prior mortgagee—Second suit by puisne mortgagee for sale and purchase—Suit by prior purchaser for possession—Remedies of non-impleaded second mortgagee.*

Where the first of two simple mortgagees of the same property brings a suit without impleading the second mortgagee, obtains a decree and himself purchases the property, and the second mortgagee afterwards brings the same property to a court sale in execution of a decree on his mortgage, *Held* : that the purchaser in the second sale takes no interest as against the first purchaser.

The first purchaser takes the right which the prior mortgagee and the mortgagor could convey to him ; and he cannot be disturbed so long as the first mortgagee's right to convey the title vested in himself and the mortgagor subsists, *i.e.*, until the first mortgage is redeemed. The proper course for the non-impleaded second mortgagee is to redeem the first, and then the purchaser in execution of the decree on the first mortgage can redeem the two mortgages vested in the second mortgagee ; and if the purchaser does not redeem the puisne mortgagee who has obtained by redemption the right of the first mortgagee, the properties may be sold, the mortgagees paid, and the balance paid to the purchaser as the representative of the mortgagor.

The prior mortgagee cannot be deprived of his rights to require the puisne mortgagee to redeem him and in default to enforce his right under his instrument of mortgage by sale or foreclosure, and there is no reason why he should not be allowed to do this even as a defendant in a mortgage suit. [*Mulla Veetil Seethi* v. *Achuthan Nair*, 21 M. L. J. 213 commented upon and observations therein doubted. *Kutti Chettiar* v. *Subramania Chettiar*, I. L. R. 32 M. 485 followed.]

Venkatagiri Aiyar v. *Sadagopachariar* 129

Mortgage—*Floating Mortgage. See* 22 M. L. J. 441

Mortgage-Redemption—*Reversioner's right to redeem—Reversioner's right to pay debt and save property from sale—Lien.*

A reversioner cannot voluntarily claim to redeem a mortgage made by the last male holder or institute a suit for that purpose ; but where the property has been brought to sale by the mortgagee he has sufficient interest in the property to entitle him to discharge the debt and save the property from sale and thereby obtain a lien on the property capable of being assigned or charged.

Kutti Goundan v. *Mahali Ammal.* 364

Mortgage—(*Contd.*) PAGE.

———**Subrogation**—*Discharge of mortgage by stranger*—

Mere payment of a mortgage debt by a stranger will not entitle him to the mortgagee's right by subrogation, it not being open to any meddler to claim a lien by discharging a mortgage with which he had no concern. [*Ram Tuhul Singh* v. *Biseswar Lal Sahu*, 2 I. A. 131 referred to.]

English, American and Indian law reviewed and distinctions pointed out.

Kutti Goundan v. *Mahali Ammal* 364

———**Subrogation—Essentials of**—*Entire extinguishment of discharged mortgage necessary.*

To entitle a person advancing money for the discharge of a prior mortgage to claim the right of subrogation, it must be shown that the first mortgage has been extinguished.

Hanumanthaiyan v. *Meenatchi Naidu* 12

Mortgagee-decree—*Execution—Sale of properties.*

A mortgage-decree-holder is not bound to make attempts to sell properties belonging to persons other than the judgment-debtor before he can proceed against the properties of the judgment-debtor under O. XXXIV, r. 6, C.P.C.

Krishnamachariar v. *Bagiammal* 126

Negotiable Instruments—*Pronote suit on—Evidence that plaintiff was the really intended promise—Admissibility—Mistake—Negotiable Instruments Act, S. 87.*

Evidence that by the promisee named in the suit pro-note, the plaintiff was intended as the real promisee and that the entry of another name was a mistake is admissible ; and to entitle the really intended promisee to succeed in a suit on the note, no prior rectification of the note itself is necessary. [*Subba Narayana Vathiar* v. *Ramaswamy Iyer*, I. L. R. 30 M. 88 distinguished.]

Gopal Row v. *Veerappen* 121

Officer of the C. I. D.—*Local area—Cr. P. C.*, Per *Chief Justice and Ayling, J*:—*Affirmed by Benson, Wallis and Miller, JJ.*

The local Area of the Officer of the C. I. D. is the Presidency in which he is employed notwithstanding that there is no formal order appointing the particular officer to the Presidency as his local area.

Per *Sankaran Nair, J.* (concurred by in *Abdur Rahim and Sundara Aiyar, JJ.*) Police Officers entitled to investigate an offence are the Police Officers referred to in Cr. P. C. i. e., the Station House Officer or his superior officer the Inspector of Police and the power to investigate is vested only in these Police Officers who have only local jurisdiction.

Emperor v. *Nilakanta* 491

Official statements—*Presumed accuracy of—Interference in second appeal.*

The accuracy of a statement prepared by the Revenue Department that a particular field was cultivated, on the footing of which the plaintiff had to pay revenue which the defendant was bound to pay, need not be proved by the evidence of some one present on the spot at the time the inspection of the field was made.

Narayanaswami Naidu v. *Chintalapati Subbaraju* 393

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Partnership—Suit against one partner *in representative capacity—Decree—No personal liability of others—Injunction decree, &c.*

In suits where one partner is allowed to represent others as defendant in a representative capacity, any decree passed can bind those others only with respect to the property of those others which he can in law represent ; and no personal decree can be passed against them, although the parties on record *eo nominee* may be made personally liable ; and the same holds good even though the others were cognizant of the suit and were helping the party on record in the conduct of the case.

Thambi Marakayar v. *Hamed Marakayar* 109

Penal Code, Ss. 299, 300, 301—*S.* 301, *Scope of—" Causes death," meaning of—Intending death of one and causing death of another—Intervening human agency.*

The accused gave some sweetmeat with poison intermixed to *A* with a view of causing *A's* death. *A* ate a little and threw it away and it was picked up by *R* without the knowledge of the accused and eaten by her ; and as the result thereof *R* died.

Held per *Benson* and *Abdur Rahim*, *JJ.* (*Sundara Aiyar*, *J.*, dissenting) that the accused was guilty of murder.

Per *Benson*, *J.* :—It is enough if the accused causes the death of any one by doing an act with the intention of " causing death " to any one. It is not necessary that death should be caused directly by the action.

Emperor v. *Suryanarayana Murthy* 333

———**S. 378**—"*Moveable property—Fish in irrigation tank when water is at low level.*

Semble :—The removal of fish from a Government irrigation tank, in which the water is at such a low level that the fish cannot escape, is theft.

Subbiah Servai In re. 184

———**Ss. 394, 397.**—*Robbery with grievous hurt caused by one of the body.*

S. 394 and not S. 397, I. P. C., will apply to the case of a robber who does not himself cause grievous hurt or use any deadly weapon.

Arunachella Thevan v. *Emperor.* 186

———**S. 471**—" *User* "—" *Using as genuine* "—*Production in obedience to summons— Statement that document is genuine.*

The mere production of a document in answer to a command of court (*e.g.*, a summons) cannot amount to "user" of the document, nor be regarded as fraudulent in law.

The giving of false testimony with a fraudulent intention by itself cannot amount to a fraudulent user of a document with reference to which that evidence is given. A mere statement that a document is genuine does not amount to using it as genuine. [*Asimuddi* v. *The King-Emperor* 11 C. W. N. 838 referred to.]

Muthia Chetty v. *Emperor.* 181

Pleader and client—*Relations between—'Agency' principle of, how far applies—Pleader's responsibility for clerk's conduct.*

No pleader can be permitted to completely abandon to his clerks the discharge of his duties to his clients, and in any event the vakil must

Pleader and Client—(*Contd.*) PAGE.

bear the full responsibility for the acts and faults of his clerks. In the eye of the law at least, he is responsible for the fraud perpetrated by his clerks on his client.

Muruga Chetty v. *Rajasami.* 284

Professional misconduct—*Vakil—Duty of vakil to client and court—Dismissal of case for default—Untrue statements of vakil's clerk to client—Vakil's responsibility.*

When a vakil fails to appear when his case is called on and the case is dismissed for default and an injustice is done to the client thereby, the onus is heavy on the vakil to explain the true state of affairs to the court and to his client. It is desirable that he gives his explanation to the court at the earliest opportunity; and as regards the client it is his duty to see that the real circumstances in which the case was dismissed are brought to his knowledge.

Held also that the vakil should be held responsible for the untrue statements of his clerks to the client regarding the disposal of the case in the circumstances of the case.

The practice of vakils' clerks being allowed to write letters on behalf of their masters without the masters' knowledge reprobated as unbusiness-like.

In re a Vakil 276

Reputed ownership :—See Presidency Insolvency Act., S. 52 ... 441

Specific Performance—*Decree, form of,—contract to sell land.*

The proper decree to be passed in a suit for specific performance of a contract to sell land, is to direct the subsequent purchaser to execute the conveyance to the plaintiff.

Subbu Pillai v. *Velappa Naidu* 124

Specific Relief Act, S. 15—*Injunction in case of trespass—Discretion—Court's duty.*

The granting of an injunction is a discretionary remedy.

Per *Abdur Rahim, J.*:—The discretion should be exercised on proper judicial grounds, and injunction is the proper remedy in the case of trespass on land.

Per *Phillips, J.* :—Injunction need not necessarily be granted against a trespass under all circumstances, for, in exercising its discretion, the Court cannot exclude all consideration as to the extent of damage caused by the trespass.

Where the defendant built up a wall on plaintiff's land, resting it on plaintiff's adjoining wall, and it was found that no actual damage was sustained by the plaintiff, and the lower appellate court found there was encroachment, but did not arrive at an exact finding as to the extent of the encroachment.

Held per *Abdur Rahim, J.*:—That the plaintiff was entitled to an injunction. The lower appellate court should have found distinctly the extent of encroachment.

Specific Relief Act—(*Contd.*) PAGE.

Per *Phillips, J.*:—The plaintiff was not entitled to an injunction, especially in view of the difficulty that would be experienced in framing an injunction in a case where the extent of the encroachment has not been proved.

Somasundaram Chetty and others v. *Babu Alias Ramiah and others* ... 62

————**Ss. 15, 17**—*Contract to sell property, to the whole of which defendants were not entitled—Specific performance.*

A court will not lend its sanction to a transaction devoid of legal effect, and, consequently, it will not decree specific performance of a contract to sell land by ordering execution of a deed by a person who has no title to the whole property.

Where there has been great delay in attempting to enforce a contract and circumstances have greatly changed either from a rise of prices or other causes in the interval, courts would be justified in refusing to give legal effect to an inequitable arrangement.

Govinda Naicken v. *Aiyavu Iyer*... 257

Succession—*Kunjpura estate—Withdrawal by Government of chief's power in* 1849—*Effect of withdrawal on succession to the estate and to that acquired by the chiefs after the withdrawal.*

On a question as to the custom of succession to the Kunjpura estate: *held*: that the estate was an impartible raisat and the rule of succession for the same was the rule of primogeniture.

That the withdrawal in 1849 from the Chiefs, by the Government of civil and criminal powers which the chiefs had exercised till then did not effect any alteration in their status or vary the rule which had governed the succession to the estate inclusive of the acquisitions by the Chiefs after the date of the withdrawal.

Ibrahim Ali Khan v. *Muhamed Ashan Ullah Khan* 478

Succession Act, Ss. 91, 106, 107—*Attachment of bequest before administration—Executor not party to attachment proceedings, effect of—Attachment of property not belonging to judgment-debtor—Effect.*

A bequest becomes vested in the devisee on the death of the testator, though he may not be entitled to possession except in the proper course of administration ; and consequently the same is attachable in execution of a decree against the devisee.

An attachment of a judgment-debtor's property does not become illegal because other properties which did not belong to him have also been included in the attachment.

The executor of the estate is a proper party to the attachment proceedings, but they are not liable to be set aside on the ground of his not having been made a party, especially when the objection was not taken at the time when it could have been remedied and the administration was over at the time when the objection was actually taken.

Ramanuja Ammal v. *Sawmi Pillai* 225

T. P. A., S. 6 (e)—*Mere right to sue—Damages for breach of contract—Contract to pay debts of another—Breach—Limitation.*

Transfer of Property Act—(*Contd.*) PAGE.

A right to sue for damages for breach of contract is a mere right to sue within S. 6 (*e*), T. P. A. Where the defendant undertakes to pay plaintiff's debts, the plaintiff must, in order to entitle him to sue, show a breach of contract by defendant. That he himself paid the debts can give him no cause of action ; nor will a repudiation of the agreement by defendant make time to run against plaintiff, if the plaintiff chooses to treat the contract as subsisting. If the plaintiff paid the debts before the expiry of a reasonable time after the agreement, the defendant may well plead want of reasonable time for him to perform the contract and that consequently there was breach. If the plaintiff waited till the expiry of a reasonable time, the defendant's breach of contract would give him a cause of action whether plaintiff himself paid the debts or not. The question as to what is a reasonable time is a question of fact.

Where the agreement was on 15th January 1898 and the suit was brought for breach of contract on 5th December 1904 :—*Held* that the plaintiffs' suit was barred on the expiry of 3 years from 15th January 1901 on the basis that 3 years was a reasonable time for performance.

Gopala Aiyar v. *Ramaswamy Sastrigal* 207

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——— **" Arrear "** 216
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